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Federal Communications Commission

DA 93-1152

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED BY
MM Docket No. 93-171

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Lindsborg and Sterling,
Kansas)

RM-8257

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 23, 1993; Released: October 8, 1993

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4278 (1993) ("Notice"), issued in response to a petition filed by E. Jerry Davies and Diane Davies d/b/a JD Communications ("petitioner"), proposing the substitution of Channel 238C3 for Channel 240A at Lindsborg, Kansas.¹ Petitioner also requested modification of its license for Station KQNS-FM, Channel 240A, to specify operation on Channel 238C3. The Notice specified that to accommodate petitioner's proposal, it would be necessary either to delete vacant Channel 239A at Sterling, Kansas, or, in the event applications were filed during the comment period in this proceeding, to substitute Channel 234A for Channel 239A at Sterling. Petitioner submitted late-filed comments reiterating its intention to apply for the channel.² Ad Astra per Aspera Broadcasting, Inc. ("Ad Astra") filed an application for Channel 239A at Sterling and comments supporting retention of a channel in the community.

2. We believe the public interest would be served by the substitution of Channel 238C3 for Channel 240A at Lindsborg, Kansas, since it will provide expanded reception service to the community. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.³ To accommodate the Lindsborg upgrade, we will substitute Channel 234A for Channel 239A at Sterling, Kansas. Channel 234A can be allotted to Sterling in compliance with the Commission's spacing requirements without a site restriction.⁴ Our Notice proposed

the deletion of the Channel 239A at Sterling premised on a lack of interest because the Channel had been vacant and unapplied for since the window opened in October 1991. However, an application (File No. BPH-930831MF) filed by Ad Astra, on a first-come, first-serve basis, removes the basis for deletion of the channel at Sterling. Our engineering analysis indicates that Channel 234A can be utilized at the site selected by Ad Astra.⁵ Ad Astra will be permitted to amend its application to specify operation on Channel 234A and will retain cut-off protection.⁶ We will authorize a modification of petitioner's license for Station KQNS-FM, Channel 240A, to specify operation on Channel 238C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 22, 1993, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Lindsborg, Kansas	238C3
Sterling, Kansas	234A

4. IT IS FURTHER ORDERED, That the Secretary of the Commission, Shall Send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Joseph P. Benkert
Hopper and Kanouff
1610 Wynkoop Street
Suite 200
Denver, Colorado 80202-1196
(counsel for Ad Astra Per
Aspera Broadcasting, Inc.)

Ad Astra Per Aspera
Broadcasting, Inc.
106 N. Main Street
Hutchinson, Kansas 67501

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KQNS-FM, Channel 240A, IS MODIFIED to specify operation on Channel 238C3, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

¹ An application (File No. BALH-920817HO) for assignment of license from Smoky Hill Broadcasting Co., Inc. to E. Jerry Davies and Diane Davies was granted on October 5, 1992 and consummated on October 26, 1992.

² In conformance with the Commission's general policy of accepting late-filed comments where the proceeding is uncontested, we will accept petitioner's comments for the purpose of permitting a continuing expression of interest in Channel 238C3 at Lindsborg. See *Santa Isabel, Puerto Rico*, 3 FCC

Rcd 2336 (1988).

³ The coordinates for Channel 238C3 at Lindsborg are 38-40-00 and 97-41-30.

⁴ The coordinates for Channel 234A at Sterling are 38-12-42 and 98-12-12.

⁵ The coordinates for the application site are 38-10-17 and 98-14-28.

⁶ Ad Astra will be served with a copy of this Report and Order.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, JD Communications, licensee of Station KQNS-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau